

SENATE COMMERCE, LABOR & AGRICULTURE Amendment #1

Amendment No. 1 to SB1933

**Southerland
Signature of Sponsor**

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 1933*

House Bill No. 1421

by deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 59, is amended by inserting Sections 2 through 12 of this act as a new, appropriately designated part thereto.

SECTION 2. This part shall be known, and may be cited, as the “Competitive Cable and Video Services Act”.

SECTION 3. This part creates a unified franchising process for cable and video services and codifies the terms of the franchise in state law. This part does not alter existing state law regarding local control of public right of way or the police powers of local government. This part does not alter or restrict the right of any municipality or county to impose ad valorem taxes, sales taxes, or other taxes lawfully imposed on all of the businesses within such municipality or county. This part provides that holders of a state-issued certificate of franchise authority will pay franchise fees on cable or video services equivalent to those paid by incumbent cable service franchise holders. This part does not alter the existing local franchise process for those providers who choose to negotiate a franchise with a municipality or unincorporated county government. This part does not alter or restrict in any manner the application of the Broadband Business Certainty Act as set forth in §§ 65-5-201 through 65-5-203.

SECTION 4. As used in this part, unless the context otherwise requires:

(1) “Cable service” has the meaning set forth in 47 U.S.C. § 522(6). Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(2) “Cable service provider” has the meaning set forth in 47 U.S.C. 522(5);

(3) “Cable system” has the meaning set forth in 47 U.S.C. 522(7);

(4) “Franchise” has the meaning set forth in 47 U.S.C. § 522(9), and additionally includes the authorization to construct or operate a video service provider’s wireline network facility that is used to provide video service and is not a cable system;

(5) “Franchise authority” means “franchising authority” as set forth in 47 U.S.C. § 522(10) or other governmental entity empowered by federal, state, or local law to grant a franchise. With regard to the holder of a state-issued certificate of franchise authority within the areas covered by such certificate, the Tennessee regulatory authority is the sole franchising authority. With respect to a franchise agreement with a municipality or county governing authority, that municipality or county is the sole franchising authority within the service area governed by that franchise agreement;

(6) “Gross revenues” means all revenues received from subscribers for providing cable or video services, including revenues from franchise fees, and all revenues received from non-subscribers for advertising services and as commissions from home shopping services, as allocated pursuant to Section 7(b), provided such advertising or home shopping services are disseminated through cable or video services. Gross revenues shall not include:

- (A) Any tax, surcharge, or governmental fee (other than franchise fees);
- (B) Any revenue not actually received, even if billed, such as bad debt;
- (C) Any revenue received by any affiliate or any other person in exchange for supplying goods or services to the service provider;
- (D) Any amounts attributable to refunds, rebates, or discounts;
- (E) Any revenue from services provided over the network that are associated with or classified as non-cable or non-video services under federal law, including without limitation revenues received from providing telecommunications services, information services other than cable or video services, Internet access services, directory or Internet advertising services,

including, without limitation, yellow pages, white pages, banner, and electronic publishing advertising. Where the sale of any such non-cable or non-video service is bundled with the sale of any cable or video service or services and sold for a single non-itemized price, the term "gross revenues" shall include only those revenues that are attributable to cable or video services based on the provider's books and records;

(F) Any revenue attributable to financial charges, such as returned check fees or interest;

(G) Any revenue from the sale or rental of property, except such property the consumer is required to buy or rent exclusively from the service provider to receive cable or video service;

(H) Any revenues from providing or maintaining inside wiring;

(I) Any revenue from sales for resale with respect to which the purchaser is required to pay a franchise fee, and the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect thereto; and

(J) Any amounts attributable to a reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming;

(7) "Household", means an apartment, a house, a mobile home, or any other structure or part of a structure intended for residential occupancy as separate living quarters.

(8) "Incumbent cable service provider" means the cable service provider serving the largest number of subscribers in a particular municipality or unincorporated area of a county on the effective date of this part;

(9) "Public right-of-way" means the area on, along, below, or above a public roadway, highway, street, sidewalk, alley or waterway;

(10) "Video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station, as set forth in 47 U.S.C. § 522(20);

(11) "Video service" means video programming services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This subdivision (10) does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d), video programming provided via a cable service or video programming provided as part of, and via, a service that enables end users to access content, information, electronic mail or other services offered over the public Internet; and

(12) "Video service provider" means a provider of video service. "Video service provider" does not include a cable service provider.

SECTION 5.

(a) Any entity or person seeking to provide cable or video service over a cable system or video service network facility in this state after the effective date of this part, except as permitted in Section 11, shall file an application for a state-issued certificate of franchise authority with the Tennessee regulatory authority as required by this section. An entity or person providing cable service on the effective date of this part under a franchise previously granted by a municipality or unincorporated county is not subject to, nor may it avail itself of, the franchise provisions of this part with respect to such municipality or county until such franchise expires, except as provided by subsection (b).

(b) An incumbent cable service provider or entity or person providing cable service on the effective date of this act under a franchise previously granted by a municipality or county may elect to terminate its municipal franchise and seek a state-

issued certificate of franchise authority by providing written notice to the Tennessee regulatory authority and the affected municipality or unincorporated county that either:

(1) A state-issued certificate of franchise authority indicates that one (1) or more households in the franchise area of the existing municipal franchise can obtain service from both the incumbent cable service provider under the existing agreement and the holder of a state-issued certificate of franchise authority; or

(2) One (1) or more households in the franchise area of the existing municipal franchise can obtain service from at least two (2) wire-line providers of cable or video service acting pursuant to locally-granted franchise authority. The municipal franchise is terminated on the date the Tennessee regulatory authority issues the state-issued certificate of franchise authority.

(c) The Tennessee regulatory authority shall not conduct any form of administrative procedure or substantive review of the application. The Tennessee regulatory authority shall issue a certificate of franchise authority authorizing the applicant to offer cable or video service in this state within forty-five (45) days of receipt of a filing fee of five hundred dollars (\$500) and an affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming the items outlined in the following subdivisions. Any amendment to the application shall require an additional two hundred fifty dollar (\$250) filing fee. The affidavit described in this section is the sole requirement for issuance of the certificate of franchise authority. The Tennessee regulatory authority shall not conduct any form of regulatory proceeding regarding issuance of the certificate. The Tennessee regulatory authority's function is ministerial in nature. This act does not confer upon the Tennessee regulatory authority regulatory power or jurisdiction over the providers of cable or video service. The Tennessee regulatory authority may act only in the manner prescribed herein with respect to cable or video service franchising. The affidavit shall affirm the following:

(1) That the applicant agrees to comply with all applicable federal and state laws and regulations to the extent that such state laws and regulations are not in conflict with or superseded by the provisions of this part or other applicable law;

(2) A description of the municipalities and unincorporated counties to be served, in whole or in part, by the applicant, which description shall be updated by the applicant prior to the provision of cable or video service to an area within a previously undesignated unincorporated county or municipality;

(3) The location of the principal place of business and the names of the principal executive officers of the applicant; and

(4) That neither the applicant nor any predecessor entity to the applicant owes any fees, debts, payments or contributions under an existing, expired or terminated cable or video franchise agreement anywhere in the state; provided, however, that this requirement shall not extend to any such fees, debts, payments or contributions that are currently under audit or are being disputed in any administrative or judicial proceeding.

(d) The certificate of franchise authority issued by the Tennessee regulatory authority shall contain the following and no other items:

(1) A nonexclusive grant of authority to provide cable or video service in the areas set forth in the application;

(2) A nonexclusive grant of authority to construct, maintain and operate facilities through, along, upon, over and under any public rights of way, subject to the laws of this state, including the lawful exercise of police powers of the municipalities and counties in which such service is delivered; and

(3) A statement that the grant of authority is subject to lawful operation of the cable or video service by the applicant or its successor in interest.

(e) The failure of the Tennessee regulatory authority to notify the applicant of the completeness of the applicant's affidavit or issue a certificate of franchise authority before the forty-fifth business day after receipt of a completed affidavit shall constitute issuance of the certificate applied for without further action on behalf of the applicant.

(f) The certificate of franchise authority issued by the Tennessee regulatory authority shall be for a term of ten (10) years. Upon expiration of the initial term, the holder of a certificate of franchise authority may reapply pursuant to the process set forth in Section 5.

(g) The certificate of franchise authority issued by the Tennessee regulatory authority is fully transferable to any successor in interest to the applicant to which it is initially granted for an interim period of ninety (90) days. Within the ninety (90) day period, the successor company must reapply pursuant to the process set forth in Section 5. A notice of transfer shall be promptly filed with the Tennessee regulatory authority within ten (10) days of the completion of such transfer. The Tennessee regulatory authority is neither required nor authorized to act upon the notice.

(h) The certificate of franchise authority issued pursuant to this part may be terminated by the cable or video service provider by submitting written notice of such termination to the Tennessee regulatory authority with a copy to an affected municipality or county. The Tennessee regulatory authority is neither required nor authorized to act upon the notice. Terminating certificateholders shall provide all existing customers with ninety (90) days written notice of the termination prior to actual termination and shall refund to said customers any payments and/or deposits for which service has not been provided.

(i) The certificate of franchise authority issued pursuant to this part supersedes and is in lieu of any franchise authority or approval required by state or local law as of the date of enactment of this part.

SECTION 6.

(a) Except as otherwise stated in Section 5, an incumbent cable service provider, that currently has an unexpired franchise to provide cable service with respect to such municipalities or counties is not eligible to seek a state-issued certificate of franchise authority under this part until the expiration date of the existing franchise agreement.

(b) For purposes of this part, a cable service provider will be deemed to have a franchise to provide cable service in a specific municipality or county if any predecessor entity of the cable service provider has an unexpired cable franchise agreement granted by that specific municipality or county.

(c) The terms "predecessor entity" and "successor entity," as used in this section, shall include but not be limited to any entity that directly, or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with a person receiving, obtaining, or operating under a municipal or county cable franchise through merger, sale, assignment, restructuring, or any other type of transaction.

SECTION 7.

(a)

(1) The holder of a state-issued certificate of franchise authority may be required, pursuant to an ordinance duly adopted by any municipality or county, to pay a franchise fee equal to a specified percentage of such holder's gross revenues derived:

(A) From the provision of cable or video service to subscribers located within the municipality or unincorporated areas of the county; and

(B) From nonsubscribers for cable and video advertising services and as commissions for cable and video home shopping services as allocated under subsection (b) of this section.

(2) However, in no event shall the holder be required to pay a franchise fee based on a percentage that exceeds the lesser of the incumbent cable service provider's franchise fee rate imposed by such municipality or county, if any, or five percent (5%). The ordinance imposing such franchise fee shall set forth the franchise fee rate for a holder of the state-issued certificate of franchise authority; and the municipality or county shall provide a copy of the ordinance to the holder of a state-issued certificate of franchise authority as a condition to receiving any franchise fee payments. No change to the franchise fee rate is effective earlier than forty-five (45) days after the municipality or county provides the holder with a copy of the ordinance adopting the rate change.

(b) The amount of a holder of a state-issued certificate of franchise authority's non-subscriber revenues from cable or video advertising services and from commissions for cable or video home shopping services that is allocable to a municipality or unincorporated area of a county is equal to the total amount of such holder's revenue received from such advertising and home shopping services multiplied by the ratio of the number of such holder's subscribers located in such municipality or in the unincorporated area of such county to the total number of the holder's subscribers. Such ratio shall be based on the number of such holder's subscribers as of January 1 of the preceding year, except that in the first year in which services are provided such ratio shall be computed as of the earliest practical date.

(c)

(1) A franchise fee imposed pursuant to this section shall be paid to the municipality or county within forty-five (45) days after the end of the quarter to

which the payment relates. Such payment shall be considered complete if accompanied by a statement showing, for the quarter covered by the payment:

(A) The aggregate amount of the holder of a state-issued certificate of franchise authority's gross revenues attributable to the municipality or unincorporated areas of the county;

(B) The franchise fee rate for the municipality or county; and

(C) The amount of the franchise fee payment due to such municipality or county.

(2) Any supporting statements are confidential and are exempt from disclosure to anyone other than necessary employees or agents of the applicable municipality or county under any provision of state law, except that such business records shall be available for audit as set forth below.

(d) The municipality or county may, no more than once annually and no more than once with respect to any given period, review the business records of the holder of a state-issued certificate of franchise authority to the extent necessary to ensure payment in accordance with this section. The relevant business records shall be available for inspection at the location where the records are kept by the employees or agents of the municipality or county for the purpose of audit but shall remain confidential to any other party. In the event of a dispute concerning the amount of the franchise fee due to a municipality or county under this section, an action may be brought in a court of competent jurisdiction by the municipality or county seeking to recover an additional amount alleged to be due, or by a holder of a state-issued certificate of franchise authority seeking a refund of an alleged overpayment; provided, however, that any such action must be brought within three (3) years following the end of the quarter to which the disputed amount relates. Such time period may be extended by written agreement between the holder of a state-issued certificate of franchise authority and the

municipality or county. Each party shall bear the party's own costs incurred in connection with any such examination or dispute.

(e) A municipality or county may contract with a third party for the collection of the franchise fees and enforcement of the provisions of this part. Notwithstanding the foregoing, a municipality or county shall not employ, appoint, or retain any person or entity for compensation that is dependent in any manner upon the outcome of a franchise fee audit, including without limitation, the audit findings, the recovery of franchise fees, or the recovery of any other payments.

(f) A holder of a state-issued certificate of franchise authority shall be held harmless from any liability, including payment of the franchise fee, which would otherwise be due solely as a result of an alleged incorrect assignment of a subscriber's address to a contiguous municipality or county, provided that the holder of a state-issued certificate of franchise authority provides an affidavit specifying the addresses in question and the municipality or county to which each address was assigned and to which the franchise fees were paid. A municipality or county claiming such incorrect assignment shall have the right to proceed directly against the municipality or county to which it claims that an amount has been paid in error and may file suit against such other municipality or county in a court of competent jurisdiction within three (3) years of the date on which it received the affidavit furnished by the holder of a state-issued certificate of franchise authority under this subsection (f).

(g) The holder of a state-issued certificate of franchise authority may designate that portion of a subscriber's bill attributable to any franchise fee imposed pursuant to this section, and recover such amount from the subscriber as a separate item on the bill.

(h) No municipality, county or any other local governmental entity shall levy any additional tax, license, fee, or other assessment on a cable or video service provider for the use of public rights-of-way, other than the municipal or county franchise fee

authorized by this section or a municipal or county cable franchise fee imposed upon a cable service provider before January 1, 2007. Nor shall a municipality, county or any other local governmental entity levy any other tax, license, fee, or other assessment (including any in-kind contributions) on a cable or video service provider or its customers, that is not generally imposed and applicable to a majority of all other businesses. The franchise fee in this section is in lieu of any permit fee, encroachment fee, degradation fee or other fee that could otherwise be assessed on a state-issued franchise holder for its occupation or work within the public rights-of-way. Nothing in this section shall restrict the right of any municipality or county to impose ad valorem taxes, sales taxes, or other taxes of general applicability that are lawfully imposed on all other businesses within such municipality or county. Nothing in this section shall preclude the otherwise lawful collection of pole attachment fees imposed pursuant to joint use or license agreements.

(i) The holder of a state-issued certificate of franchise authority shall notify the municipality or county government when it begins offering service to any customer within such municipality or county.

(j) The municipal or county resolution or ordinance referenced in this section shall be in the following form:

“Pursuant to T.C.A. Title 7, Chapter 59, Part 3, [municipality or county] establishes the franchise fee for holders of state-issued certificates of franchise authority to provide cable or video services in [municipality or county] to be [the lesser of ____% of gross revenue as provided by the existing municipal franchise governing the incumbent cable service provider or five percent (5%)]. In no event shall the holder of a state-issued certificate of franchise authority be required to pay a franchise fee based on a percentage that exceeds the lesser of the incumbent cable service provider’s franchise fee rate imposed by the municipality or county, if any, or five percent (5%).]”

Pursuant to T.C.A. Title 7, Chapter 59, Part 3, the method of payments by holders of state-issued certificates of franchise authority to provide cable or video services in [municipality or county] shall be that the holder of the state issued certificate of franchise authority shall remit franchise fees quarterly and may do so by check or electronic transfer.

Payment by check shall be sent to: [address].

Payment by electronic transfer shall be provided by: [wire instructions].

Pursuant to T.C.A. Title 7, Chapter 59, Part 3, payment shall be accompanied by a statement showing, for the quarter covered by the payment, the state-issued certificate of franchise authority holder's gross revenues attributable to customers in [municipality or county]. The accompanying statement showing gross revenues is confidential and exempt from disclosure under any provision of state law."

SECTION 8. No franchising authority, state agency, municipality, county or political subdivision of the state may impose any cable system or video service provider network construction or cable or video service deployment build-out requirements on a holder of a state-issued certificate of franchise authority.

SECTION 9.

(a) The holder of a state-issued certificate of franchise authority must comply with customer service requirements no more restrictive than the federally required standards found in 47 C.F.R. 76.309(c). Recognizing the increased choice customers will have with more providers, no other service quality standards shall be imposed in addition to the federal standards.

(b) The municipality or county government shall receive customer inquiries or complaints, for customers located in such municipality or county, of the holder of a state-issued certificate of franchise authority. The municipality or county government may endeavor to bring about a voluntary resolution of any such complaint, but may not

enforce or seek the enforcement of any provisions of this section. The holder of a state-issued certificate of franchise authority shall designate a contact person to respond to customer complaints received by the municipality or county government. The municipality or county government may require that the cable or video service provider participate in mandatory confidential mediation with the affected municipality or county and the subscriber if the issue cannot be resolved between the cable or video service provider and the subscriber. The cost of such mediation shall be shared equally between the municipality and the provider except as set forth below. Such mediation shall occur in the municipality or county in which the customer resides. Should the mediator conclude that the provider has failed to provide service as required pursuant to the applicable customer contract or terms and conditions, the mediator may award service credits to the customer not to exceed three (3) months of service and the provider shall bear the full cost of the mediation. All parties to the mediation reserve any and all appeal rights.

(c) Nothing in this section expands or limits any individual customer's right to bring a claim regarding customer service to a court of competent jurisdiction.

SECTION 10.

(a) Not later than one hundred eighty (180) days after a written request by a municipality or county, the holder of a state-issued certificate of franchise authority shall designate a sufficient amount of capacity on its network to allow for the provision of public, educational, and governmental (PEG) access channels for noncommercial programming consistent with this section.

(b) The holder of a state-issued certificate of franchise authority shall designate a sufficient amount of capacity on its cable system or video service network to allow the provision of a comparable number of PEG access channels that a municipality or county has activated under the incumbent cable service provider's franchise agreement as of

the effective date of this part. For purposes of this section, a PEG channel is deemed activated if the municipality or county certifies that it is being utilized for PEG programming within the municipality or county for at least fifteen (15) hours of nonduplicative original programming per month of operation.

(c) If a municipality or county did not have PEG access channels under the incumbent cable service provider's franchise agreement as of such effective date, the cable or video service provider shall designate upon written request a sufficient amount of capacity on its cable system or video service network to support up to three (3) PEG channels for a municipality or county with a population of fifty thousand (50,000) or more households; up to two (2) PEG channels for a municipality or county with less than fifty thousand (50,000) but more than twenty-five thousand (25,000) households; and one (1) PEG channel for a municipality or county with less than twenty-five thousand (25,000) households.

(d) Any PEG channel capability provided pursuant to this section that is not utilized by the municipality or county for at least fifteen (15) hours of nonduplicative original programming per month shall no longer be made available to the municipality or county, but may be programmed at the cable or video service provider's discretion. At such time as the municipality or county can certify to the cable or video service provider a schedule for at least fifteen (15) hours of nonduplicative original programming per month, the cable or video service provider shall restore the previously lost channel but shall be under no obligation to carry that channel on a basic or analog tier.

(e) In the event a municipality or county has not utilized the maximum number of PEG access channels as permitted by subsection (b), access to the additional channel capacity allowed in subsection (b) shall be provided upon one hundred twenty (120) days request only if the municipality or county can demonstrate that all activated PEG channels are "substantially utilized." PEG channels shall be considered "substantially

utilized” when twelve (12) contiguous hours are programmed on that channel each calendar day. In addition, at least seventy-five percent (75%) of the twelve (12) hours of programming for each business day on average over each calendar quarter must be non-repeat programming. Non-repeat programming shall include the first three (3) video castings of a program.

(f) A municipality or a county is eligible for one (1) additional PEG channel over and above the number specified in subsection (c) above, if it meets the requirements of this subsection. The municipality or county must request an additional channel in writing. The additional channel may be provided on any service tier. The existing PEG channels operated by the municipality or county must meet the following programming requirements for at least one hundred twenty (120) continuous days in order for the municipality or county to obtain additional PEG capacity:

(1) All of the PEG channels must have scheduled programming for at least eight (8) hours per day;

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels; and

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(g) The operation of any PEG access channel provided pursuant to this section shall be the responsibility of the municipality or the county receiving the benefit of such channel and the holder of a state-issued certificate of franchise authority bears only the responsibility for the transmission of such channel. The holder of a state-issued certificate of franchise authority shall be responsible for providing the connectivity to each PEG access channel distribution point up to the first two hundred feet (200') from

the activated cable system or video service network. The municipality or county shall be responsible for all connectivity beyond the first two hundred feet (200').

(h) The municipality or the county must ensure that all transmissions of content and programming provided by or arranged by them to be transmitted over a PEG channel by a holder of a state-issued certificate of franchise authority are provided and submitted to the cable or video service provider in a manner or form that is capable of being accepted and transmitted by such provider over its cable system or video service network without further alteration or change in the content or transmission signal, and which is compatible with the technology or protocol utilized by the cable or video service provider to deliver its cable or video services. The provision of PEG content to the provider shall constitute authorization for the provider to carry such content including, at the provider's option, beyond the jurisdictional boundaries of the municipality or county.

(i) Where technically feasible, the incumbent cable service provider shall, upon receipt of a written request of a holder of a state-issued certificate of franchise authority, negotiate in good faith to interconnect its cable system with the cable system or video service network of such certificate holder on mutually acceptable and reasonable terms in order to enable such certificate holder to gain access to PEG programming. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection.

(j) A holder of a state-issued certificate of franchise authority is not required to interconnect for, or otherwise to transmit, PEG content that is branded with the logo, name, or other identifying marks of another cable or video service provider, and a municipality or county may require a cable or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available to another provider.

(k) Municipalities and counties shall be eligible for PEG access support fees as follows:

(1) If a county or municipality is receiving PEG access support as of January 1, 2007, the county or municipality may, at its option, enact an ordinance requiring each holder of a state-issued certificate of franchise authority to pay a PEG access support fee, as specified in this subsection, that is equivalent to any such payments required to be made by the incumbent cable service provider with the most subscribers in such municipality or county as of January 1, 2007. Such obligation shall continue until the expiration of said incumbent cable service provider's local franchise that was in existence as of January 1, 2007, or, if the incumbent cable service provider terminates its local franchise agreement, until such franchise would have expired under its terms. Such payment obligation shall be as follows:

(A) If such incumbent cable service provider provides PEG access support in the form of periodic payments to the municipal or county governing authority that are equal to a percentage of gross revenue or a specified per-subscriber amount, the holder of a state-issued certificate of franchise authority shall make payments to the governing authority equal to the same percentage of gross revenue or per-subscriber amount.

(B) If such incumbent cable service provider provides PEG access support to the municipal or county governing authority in the form of a lump-sum payment or a series of fixed payments, then to the extent that the incumbent cable service provider's obligation to make such payments remains unsatisfied as of January 1, 2008, the holder of a state-issued certificate of franchise authority shall pay to such

municipality or county an amount equal to the portion of such incumbent cable service provider's remaining obligation due during such calendar year multiplied by a fraction, the numerator of which is the total number of the franchise holder's subscribers in such municipality or county as of June 30 of the prior year and the denominator of which is the total number of cable service and video service subscribers of all service providers in such municipality or county as of the same date.

(2) No payments shall be due under this subsection, and no change in the amount of such payments shall take effect, until the later of January 1 of each year or forty-five (45) days after the municipality or county notifies the respective providers of whichever of the following apply:

(A) The applicable percentage of gross revenues;

(B) The applicable per-subscriber amount expressed as a monthly, quarterly or annual amount; and

(C) The state franchise holder's lump sum payment obligation for the upcoming calendar year.

Such notification shall not be complete until the municipality or county provides to the holder of a state-issued certificate of franchise authority the termination date of the incumbent cable provider's franchise and copies of all supporting documents used to determine any payment obligations when establishing a payment obligation or to make a change thereto.

(3) All such payments due under this section shall be remitted with the franchise fee payment, and the administrative provisions of Section 7 and the definitions of Section 4 shall apply.

(4) All cable and video service providers may designate that portion of the subscriber's bill attributable to any payment required under this section as a separate item on the bill and recover such amount from the subscriber.

SECTION 11.

(a) Nothing in this section shall reduce or expand the existing police powers of municipalities with respect to public rights of way, including expressly the right to require notice or permits for the placement or installation of facilities in the right-of-way, and the right to impose reasonable and non-discriminatory requirements that, when any damage to public rights-of-way is caused by installation of equipment or facilities of any user of public rights-of-way, the user must restore the right-of-way to a substantially similar condition as existed prior to such damage. In addition to a municipality's and county's authority to exercise its nondiscriminatory police power with respect to public rights-of-way under current law and its role relating to complaints set forth in Sections 9 and 12, a municipality's or county's authority to regulate the holder of state-issued certificate of franchise authority is limited to:

(1) A requirement that the holder of a state-issued certificate of franchise authority who is providing cable or video service within the municipality or unincorporated county register with such municipality or county and maintain a point of contact;

(2) The establishment of reasonable guidelines regarding the use of public, educational, and governmental access channels; and

(3) A requirement that the holder of a state-issued certificate of franchise authority may be required, in the discretion of the municipality or county, to post and maintain a bond, in an amount not to exceed seventy-five thousand dollars (\$75,000), which shall be available to the municipality or county in the event that damage to the right of way is caused by the certificateholder and not repaired

upon written notice to the certificateholder of the damage. The discretion to require posting of the bond shall be exercised based on the specific circumstances of the particular holder of the state-issued franchise.

(b)

(1) A cable service provider or video service provider may elect to negotiate a local cable service or video service franchise agreement with a municipal or county franchise authority and may enter into a negotiated cable television franchise agreement in accordance with Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq., or a video service franchise agreement in accordance with any applicable state or federal law that establishes the terms and conditions for the franchise agreement within the jurisdictional limits of that municipality or county. A local cable service or video service franchise agreement entered into after July 1, 2007, shall remain in force and effect through its expiration date notwithstanding the provision for terminating a local franchise agreement established in Section 5(b), which shall not apply to local franchise agreements entered into after July 1, 2007.

(2) A cable service provider or video service provider may elect to adopt the terms of a negotiated franchise agreement entered into after July 1, 2007, between a cable service provider or video service provider and a municipal or county franchise authority in the service area in which the provider desires to provide service. The municipal or county franchise authority shall be required to enter into any such negotiated franchise agreement upon the same terms and conditions to any requesting cable service provider or video service provider. A local cable service or video service franchise agreement that is adopted by a cable service provider or video service provider after July 1, 2007, shall remain in force and effect through its expiration date notwithstanding the provision for

terminating a local franchise agreement established in Section 5(b), which shall not apply to local franchise agreements entered into after July 1, 2007.

(3) Nothing in this section shall confer authority upon municipality or county to require any cable or video service provider to negotiate a local cable or video service franchise agreement with a municipality or county. This decision to choose whether to utilize either the state-issued certificate of franchise authority process or the local process is within the sole discretion of the cable or video service provider.

SECTION 12.

(a)

(1) A cable or video service provider that has been granted a state issued certificate of franchise authority may not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.

(2) For purposes of determining whether a cable or video service provider has violated subdivision (1), cost, density, distance, and technological or commercial limitations shall be taken into account. The inability to provide access to service because a holder is prohibited from placing its own facilities in a building or property shall not be found to be a violation of subdivision (1). Use of any alternative technology or service arrangement that provides comparable content, service, and functionality may not be considered a violation of subdivision (1). This section shall not be construed as authorizing any build-out requirements on a cable or video service provider.

(b) If a cable or video service provider is using telecommunication facilities to provide cable or video service and has more than one million telecommunication access lines in this state, the provider shall provide access to its cable or video service to a

number of households equal to at least twenty-five percent (25%) of the households in the provider's telecommunications service area in the state within three (3) years of the date it began providing cable or video service pursuant to authorization under Section 5 and to not less than fifty percent (50%) of such households within six (6) years. A cable or video service provider is not required to meet the fifty percent (50%) requirement provided in this subsection until two (2) years after at least thirty percent (30%) of the households with access to the provider's cable or video service subscribe to the service for six (6) consecutive months.

(c) Each provider described in subsection (b) of this section shall file an annual report with the franchising entities in which each provider provides service and the Tennessee Regulatory Authority regarding the progress that has been made toward compliance with the provisions of subsection (b) of this section.

(d) Except for satellite service, a cable or video service provider may satisfy the requirements of subsection (b) through the use of alternate technology that offers service, functionality, and content which is demonstrably similar to that provided through the provider's cable or video service network and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall include local public, education, and government channels as required under Section 10.

(e) A cable or video service provider may apply to the Tennessee Regulatory Authority for a waiver of or an extension of time to meet the requirements of subsection (b) if one or more of the following apply:

(1) The inability to obtain access to public and private rights-of-way under reasonable terms and conditions;

(2) Developments or buildings not being subject to competition because of existing exclusive service arrangements;

(3) Developments or buildings being inaccessible using reasonable technical solutions under commercially reasonable terms and conditions;

(4) Natural disasters; or

(5) Factors beyond the control of the cable or video service provider.

(f) The Tennessee Regulatory Authority may grant the waiver or extension only if the provider has made substantial and continuous effort to meet the requirements of subsection (b). If an extension is granted, the Tennessee Regulatory Authority shall establish a new compliance deadline. If a waiver is granted, the Tennessee Regulatory Authority shall specify the requirement or requirements waived.

(g) Notwithstanding any other provision of this act, a cable or video service provider using telephone facilities to provide video service shall not be obligated to provide such service outside the provider's existing telephone exchange boundaries.

(h) Except as otherwise provided in this act, a cable or video service provider shall not be required to comply with, and no entity may impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by this section.

(i) Any municipality or county in which a cable or video service provider operates may file a complaint in a court of competent jurisdiction alleging a violation of subsection (b) of this section. The court shall act on such complaint in accordance with Section 13.

(j) Any potential residential subscriber or group of residential subscribers who believes they are being denied access to services in violation of subsection (a) may file a complaint with the municipality or county in which the residential subscribers are located, along with a clear statement of the facts and the information upon which they are relying to support the complaint. Upon receipt of any such complaint, the municipality or county shall serve a copy of the complaint and supporting materials upon the subject cable or video service provider who shall have sixty (60) days after receipt of such information to

submit a written answer and any other relevant information the provider wishes to submit to the municipality or county in response to the complaint. If, after review of the complaint and the responsive information, the municipality or county determines that a material violation of subsection (a) has occurred, the municipality or county shall issue a written order setting forth the basis for such findings and giving the cable or video service provider a reasonable period of time to cure such violation.

(k) If the cable or video service provider subject to an order issued by the municipality or county pursuant to subsection (a) fails to cure the violation within a reasonable period of time, the municipality or county may file an enforcement action on behalf of the affected potential subscribers in any circuit court of this state or in any federal court of competent jurisdiction. A cable or video service provider that is found by the municipality or county to be in violation of subsection (a) may challenge that determination in the circuit courts of this state or in any federal court of competent jurisdiction, and shall be entitled to a de novo hearing by such court on the merits of the complaint, including any findings of fact relied upon by the municipality or county to support such determination.

SECTION 13. Should the holder of a state-issued certificate of franchise authority be found by a court of competent jurisdiction to be in noncompliance with the requirements of this part, the court may order the holder of the state-issued certificate of franchise authority, within a specified reasonable period of time, to cure such noncompliance. If the video or cable service provider meets the requirements of the provisions of this part within the court-ordered period of time, the court shall dismiss the claim of noncompliance.

SECTION 14. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this part.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it.